

SDMS Document ID



2002698

Federal Advisory Committee Act

From Bureau of
Reclamation's
Conflict Management
Guidebook, 1998.
-Juganne

What is the Federal Advisory Committee Act?

The Federal Advisory Committee Act (FACA) of 1972, (Public Law 92-463, 5 U.S.C., App) controls the existence and operation of groups that advise Federal Executive agencies. Congress enacted FACA to enhance public accountability of advisory committees, protect against undue influence of special interests, and reduce wasteful expenditures of public funds.

What type of groups and activities does FACA apply to?

FACA applies to "advisory committees." Advisory Committees are groups of private individuals who gather to advise the government. They are often groups of experts who offer technical advice or provide nongovernment opinion on crucial issues. The FACA defines advisory committee to mean "any committee, board, commission, council, conference, panel, task force or other similar group, or any subcommittee or other subgroup thereof . . . which is: (A) Established by statute or reorganization plan, or (B) Established or utilized by the President, or (C) Established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes . . . any committee which is composed wholly of full-time officers or employees of the Federal Government."

There are some restrictions on the applicability of FACA found within FACA itself and also in other laws, such as the Unfunded Mandates Reform Act of 1995. In addition, General Services Administration (GSA), the agency which has been delegated responsibility for carrying out the functions of FACA, has issued regulations and guidance on the applicability of FACA found in 41 CFR §§ 101-6.1001 to 101.1035. The following is a brief summary of criteria to determine if FACA applies and exceptions to the criteria. This is a very general listing, which is not intended to define when FACA applies, but rather to give general information about FACA. For a more comprehensive analysis, contact the Solicitor's Office or Reclamation's Committee Management Officer, Property and Office Services, D-7924.

FACA APPLIES TO	FACA DOES NOT APPLY TO
<p>A "group"; for example a roundtable.</p> <p>Group must consist of members outside of Federal Government, for example, members of the public, members of trade associations.</p> <p>Advice or recommendation sought from the group. For example, a consensus is being sought.</p> <p>Established or utilized by Federal Government.</p>	<ul style="list-style-type: none"> Meetings with a single individual. Meetings where advice or opinions of individual attendees are sought. Meetings comprised wholly of full-time Federal employees. Meetings between Federal officials and elected officers of State, local, and tribal governments regarding Federal programs established pursuant to public law that share Intergovernmental responsibilities. Meetings with local civic groups whose primary function is that of rendering a public service with respect to a Federal program. Meetings with groups for the purpose of exchanging facts or information. Meetings with groups that perform primarily operational functions. Meetings with permittee or contractors to discuss routine matters directly related to the particular permit or contract. State or local group established to advise State or local officials. Meetings initiated by a group to provide the group's view (not to be used recurrently or as a preferred source of advice).

What is required if FACA applies?

If FACA applies to your process, then it requires several things, some of which are:

- Committees must be chartered before they can meet or conduct any business. Advisory committees can be created only when they are essential to the performance of a duty or responsibility.
- The committee membership must be balanced in terms of the points of view represented.
- The committee must remain only advisory, and the determination of actions and policy must remain with the agency.
- The committee must publish a notice of all meetings, and ensure they are open to the public, and allow interested persons to appear before or file statements with the committee, subject to reasonable rules established by administrator.
- The committee must record detailed minutes and make available transcripts of the meetings, at only the actual cost of duplication.
- A limitation on the compensation paid to committee members applies.

Reclamation's Committee Management Officer, D-7924, will assist you in chartering the committee and obtaining necessary approvals.

Application of FACA to ADR processes

FACA may affect your activities in alternative dispute resolution (ADR) processes, particularly when negotiation and facilitation are used to gather public input for decisionmaking. ADR processes such as mediation, when used to resolve a specific dispute between Reclamation and one or more parties, are not for the purpose of obtaining advice or recommendations, even though a mediation event requires "consensus" by the parties in order to resolve the dispute. Also, the Administrative Dispute Resolution Act specifically allows for some ADR processes to be conducted in confidence, although potentially adverse consequences of shielding discussions from the public should be carefully weighed.

Where to go for more information

The GSA has been delegated responsibility for carrying out the functions of FACA and has published regulations and guidance on FACA in the Code of Federal Regulations (41 CFR 101-6). The Department of the Interior has guidelines published in the Departmental Manual, 308, DM. Reclamation has a directive in the Reclamation Manual, ADM 01-01, and has a Committee Management Officer, located in the Management Services Office, D-7924. The Committee Management Secretariat, an organization created by FACA to evaluate and monitor compliance with FACA, maintains an excellent website, which includes the law, regulations, legal opinions, etc. Their site is found at: <http://policyworks.gov/org/main/mc/linkit.htm>.

Deciding if FACA applies in a given dispute is a confusing and developing area of law, so it is important that you contact the Solicitor's Office or Reclamation's Committee Management Officer, D-7924, to determine if FACA applies to your situation.